IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 18TH DECEMBER 2007 / 27TH AGRAHAYANA 1929

Bail Appl..No. 7642 of 2007()

CRIME NO.119/07 OF CHIRAYINKEEZHU POLICE STATION

PETITIONER : ACCUSED NO.1

SHARON SADIQUE, S/O.SADIQUE,
AGED 21 YEARS, FATHIMA MANZIL, KOONTHALLOOR
VILLAGE, CHIRAYINKEEZHU TALUK, TRIVANDRUM DISTRICT

BY ADV. SRI.T.GOPALAKRISHNAN

RESPONDENTS: COMPLAINANT:

STATE OF KERALA REPRESENTED BY THE
SUB INSPECTOR OF POLICE, CHIRAYINKEEZHU
THROUGH THE PUBLIC PROSECUTOR, HIGH COURT OF
KERALA.

BY PUBLIC PROSECUTOR SRI.S.U.NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 18/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.7642 of 2007

Dated this the 18th day of December, 2007

ORDER

Application for anticipatory bail. Petitioner is the 1st accused. Altogether there are 4 accused persons. He along with co-accused faces allegations for offences punishable under Section 394 r/w 149 I.P.C. The crux of the allegations against the petitioner is that he along with co-accused - 4 accused persons in all, on 21.03.07 at about 9 p.m threatened the defacto complainant and robbed him of a mobile phone and a wrist watch which he was having in his possession at the relevant time. The complaint was filed on the next day. In the F.I statement, the petitioner is named. Investigation is in progress. Accused 2 and 4 have subsequently been arrested. Their confession statements also reveal the complicity of the petitioner. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. He is moderately blind. Reliance is placed on Annexure-B certificate of the medical board

which indicates that the petitioner is a moderately blind person (50%). It is submitted that the petitioner is unable to see properly and the allegation that the petitioner had resorted to this crime is fanciful and exaggerated. It is prayed that anticipatory bail may be granted to the petitioner.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that complicity of the petitioner is clearly revealed in the F.I statement. There is no reason to doubt or suspect that the said version is not correct. Arrested co-accused have in their confession statements clearly implicated the petitioner. The mobile phone, the wrist watch as also the weapons used have got to be recovered. The petitioner has to be arrested and interrogated in custody to attempt to recover the weapons and the stolen articles. In any view of the matter, there are no features in this case which can justify or warrant the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C, submits the learned Public Prosecutor.

4. Having considered all the relevant inputs, I find merit in the opposition by the learned Public Prosecutor. I am satisfied

that there are no circumstances warranting or justifying the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. This, I agree with the learned Public Prosecutor, is a fit case where the petitioner must appear before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail.

5. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-